

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DANIEL WHEAT

PLAINTIFF

V.

CIVIL NO. 3:94CV171-B-A

PORTER WILKINSON, ET AL.

DEFENDANTS

ORDER

The court has before it the Motion to Dismiss or, in the alternative, Motion for Summary Judgment of the defendants Porter Wilkinson, Steve Puckett, A.K. Showers and Christopher Epps. The motion was filed on March 8, 1995, and the plaintiff responded on April 10, 1995. The time for filing a reply to the plaintiff's response has passed, and the motion is now ripe for decision.

This is an action by the plaintiff Daniel Wheat, an inmate at the Mississippi Department of Corrections facility at Parchman, Mississippi. The defendants are all employees of the State at Parchman. The plaintiff alleges that on November 13, 1991, the plaintiff escaped from the penitentiary at Parchman and was apprehended on the same day while he was still within the confines of penitentiary property. According to the plaintiff, after he was apprehended and while he was handcuffed and offering no resistance, the defendants repeatedly kicked and struck him on the back of his head, in the face and in the abdomen and threatened him with a firearm. The plaintiff alleges that he suffered extreme pain and injury, great emotional trauma and distress as a result of the beatings.

The defendants filed an Answer in this case on December 12, 1994 in which they raised the defense of qualified immunity from suit under 42 U.S.C. § 1983. At the case management

conference in this matter held on February 14, 1995, the court entered an Order directing the defendants to file a Motion to Dismiss/Motion for Summary Judgment on the ground of qualified immunity within thirty (30) days of the conference or otherwise waive the claim of immunity insofar as discovery is concerned, although the defense would be preserved as to liability. At the time of the case management conference, the Fifth Circuit had decided Wicks v. Mississippi State Employment Services, 41 F.3d 991 (5th Cir. 1995), but had not yet decided Schultea v. Wood, 47 F.3d 1427 (5th Cir. 1995). The court's directive was an attempt to comply with the apparent directive of Wicks that, in a case where qualified immunity is claimed by the defendant, the District Court first find "that the plaintiff's pleadings assert facts which, if true, would overcome the defense of qualified immunity." Wicks, 41 F.3d at 994.

Since Wicks, however, Schultea has been decided. According to Schultea, the question of whether or not the plaintiff's allegations are sufficiently detailed to overcome the assertion of qualified immunity, at least to such a degree to allow the case to go forward with discovery, may be resolved by requiring the plaintiff to file a reply under Rule 7 of the Federal Rules of Civil Procedure if the complaint itself does not provide sufficient detail.

The defendants' motion is based on four grounds: (1) that the complaint fails to state a claim upon which relief may be granted; (2) that the allegations of the complaint are conclusory and insufficient to state a claim under 42 U.S.C. § 1983; (3) that plaintiff did not sufficiently plead an actual deprivation of a constitutional right; and (4) that the defendants are entitled to official and qualified immunity. Although the defendants specifically address only ground number (4) in their brief in support of the Motion to Dismiss, nevertheless, in the court's view, all four grounds are intertwined in that they have to do with the sufficiency of the plaintiff's

complaint.

It is the court's opinion that the plaintiff's complaint does in fact state a claim with sufficient particularity to overcome the defendants' invocation of the qualified immunity defense at this stage of the litigation. The defendants urge that plaintiff has failed to allege violation of a clearly established constitutional right because he has not or cannot show "significant injury" as a result of the beating which he alleged he received from the defendants.

The incident in this case occurred prior to the Supreme Court's decision in Hudson v. McMillian, 503 U.S. 1, 112 S. Ct. 995, 117 L. Ed. 2d 156 (1992). Nevertheless, if the plaintiff's allegations are taken as true, which the court must do for purposes of decision of this motion, he has alleged brutal actions taken for purposes of punishment and in the absence of a need for physical force or institutional order. Thus, even under clearly established law at the time of this alleged assault and battery, "unnecessary and wanton infliction of pain" constituted a violation of the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 106 S. Ct. 1078, 89 L. Ed. 2d 251 (1986).

It is clear to the court that there are genuine issues of material fact which preclude the granting of a Motion to Dismiss or a Motion for Summary Judgment under Rule 56 at this time. As a consequence, it is

ORDERED

That the motion of the defendants Porter Wilkinson, Steve Puckett, A.K. Showers and Christopher Epps to dismiss or, in the alternative, for summary judgment, be and the same is hereby overruled.

THIS the 25th day of April, 1995.

UNITED STATES MAGISTRATE JUDGE